

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW YORK STATE CORRECTIONAL OFFICERS AND
POLICE BENEVOLENT ASSOCIATION, *et al.*,

Plaintiffs,

-against-

KATHY HOCHUL, in her official capacity as Governor of the
State of New York¹, *et al.*,

Defendants.

**NOTICE OF MOTION
TO DISMISS
PURSUANT TO
FEDERAL RULES OF
CIVIL PROCEDURE
12(b)(1) AND 12(b)(6)**

Docket No.: 1:21-CV-0535
(MAD/CFH)

PLEASE TAKE NOTICE that upon the Defendants' Memorandum of Law in Support of their Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and upon the Declaration of Brian W. Matula dated September 20, 2021 with annexed exhibits, and upon all prior proceedings, Defendants will move this Court at a date and time to be established by the Court at the United States District Court, Northern District of New York, Albany, New York, for (1) the substitution pursuant to F.R.C.P. Rule 25(d) of Governor Kathy Hochul as the successor of former Governor Andrew M. Cuomo on the Court's Docket; and (2) judgment pursuant to F.R.C.P. Rules 12(b)(1) and 12(b)(6) and as more fully set forth in Defendants' Memorandum of Law in Support of their Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Defendants are seeking the dismissal of Plaintiff's action in its entirety.

¹ Governor Kathy Hochul succeeded Andrew M. Cuomo as Governor of the State of New York on August 24, 2021. Accordingly, Governor Hochul has been automatically substituted as a defendant. *See* Fed. R. Civ. P. 25(d). Defendants respectfully request that the Court direct the Clerk of the Court to modify the Court's electronic docket accordingly.

Dated: September 20, 2021
Albany, New York

LETITIA JAMES
Attorney General
Attorney for the Defendants
State of New York
The Capitol
Albany, New York 12224-0341

By: s/Brian W. Matula
Brian W. Matula, Esq.
Assistant Attorney General, of Counsel
Bar Roll No. 511717
Telephone: (518) 776-2599
Email: Brian.Matula@ag.ny.gov

By: Michael G. McCartin, Esq.
Assistant Attorney General | Special Counsel
Bar Roll No. 511158
Telephone: (518) 776-2620
Email: Michael.McCartin@ag.ny.gov

TO: Emily Grace Hannigan, Esq. (VIA ECF)
Lippes Mathias Wexler Friedman LLP
Attorneys for Plaintiffs
54 State Street, Suite 1001
Albany, NY 12207
518-462-0110
Fax: 518-462-5260
Email: ehannigan@lippes.com

Gregory Taylor Myers, Esq. (VIA ECF)
Lippes Mathias Wexler Friedman LLP
Attorneys for Plaintiffs
54 State Street, Suite 1001
Albany, NY 12207
518-462-0110
Fax: 518-462-5260
Email: gmyers@lippes.com